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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS O'CONNOR, THOMAS COLOPY, MATTHEW MANAHAN, AND ELIE GURFINKEL, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,

Defendant.

HAKAN YUCESOY, ABDI MAHAMMED, MOKHTAR TALHA, BRIAN MORRIS, AND PEDRO SANCHEZ, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

UBER TECHNOLOGIES, INC. AND TRAVIS KALANICK,

Defendants.

CASE NO. CV 13-03826-EMC
CASE NO. CV 15- 00262-EMC

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hearing: August 29, 2019
Time: 1:30 p.m.
Courtroom: 5
Judge: Judge Edward Chen

NOTICE OF MOTION AND MOTION

TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on Thursday, August 29, 2019, at 1:30 p.m., or as soon thereafter as the matter can be heard before the Honorable Edward M. Chen, in Courtroom 5 of this Court, located at 450 Golden Gate Avenue, 17th Floor, San Francisco, California, Plaintiffs will and hereby do move the Court for an Order granting Plaintiffs' motion for final approval of the proposed class action settlement reached in this case.

This Motion is based on this Notice of Motion and Motion; the Memorandum of Points and Authorities below; the Declaration of Katherine Hathaway filed concurrently herewith; all supporting exhibits filed herewith; all other pleadings and papers filed in this action; and any argument or evidence that may be presented at the hearing in this matter.

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I. INTRODUCTION

Plaintiffs seek final approval of a $20 million class settlement, plus non-monetary benefits, that will resolve wage and hour claims related to their alleged misclassification as independent contractors by Defendants Uber Technologies, Inc. and Travis Kalanick ("Defendants" or "Uber").[1] The Court previously granted preliminary approval of the settlement terms, finding that "the monetary relief is sufficiently robust to make the amount offered to Plaintiffs in settlement fair, adequate, and reasonable given the potential risks and expense of further litigation." O'Connor v. Uber Techs., Inc., No. 13-CV-03826-EMC, 2019 WL 1437101, at *12 (N.D. Cal. Mar. 29, 2019). The Court also found that "the requirements for certifying the Settlement Class are met", id. at *6, and that all of the factors outlined in Rule 23(e)(2) generally favored preliminary approval of the settlement. Id. at *6-14.

The Court reached this conclusion after entertaining supplemental briefing it had requested concerning seven different issues related to the settlement. See Dkt. No. 924 (Supp. Briefing Order); Dkt. No. 927 (Supp. Brief). The Court has already exhaustively considered a prior proposed settlement that would have released the same claims (for less consideration per class member) and has carefully considered the parties' voluminous briefing on class certification.[2] Thus, the Court has thoroughly reviewed the proposed settlement at the preliminary stage with the same rigor applicable at the final approval stage. See Cotter v. Lyft, Inc., 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) ("courts should review class action settlements just as carefully at the initial stage as they do at the final stage…rather than kicking the can down the road.").

As described below, nothing has happened since preliminary approval and during the notice

[1] The settlement releases claims arising between August 16, 2009 and February 28, 2019. See Dkt. No. 928-1 (Long Form Notice).

[2] As the Court noted in its Preliminary Approval Order, "the Ninth Circuit reversed [the class certification orders in this case] on the rationale that Uber's arbitration provision is enforceable, and therefore that drivers subject to the provision could only pursue their claims in individual arbitration rather than as members of the class. The ruling did not otherwise disturb this Court's findings that the California drivers had established numerosity, commonality, typicality, and adequacy with respect to their expense reimbursement and gratuities claims." O'Connor v. Uber Techs., Inc., No. 13-CV-03826-EMC, 2019 WL 1437101, at *5 (N.D. Cal. Mar. 29, 2019) (internal citation omitted).

process that should alter the Court's conclusion that the settlement is "fair, reasonable, and adequate." Indeed, the results of the notice and claims process show that the vast majority of the settlement class successfully received notice of the settlement, more than 58% of the settlement fund has been claimed so far, exceeding Plaintiffs' initial estimates, and only a handful of drivers have opted out or objected to the settlement. Particularly in view of the risks of going forward (including the risk that the landmark Dynamex ruling is now at risk of being curtailed legislatively, as well as the ongoing uncertainty regarding its retroactive application), the proposed settlement provides a tremendous benefit to the class. Accordingly, the Court should grant final approval of the settlement.[3]

II. RESULTS OF THE NOTICE PROCESS / DISTRIBUTION PLAN

On April 19, 2019, in accordance with the post-preliminary approval schedule set by the Court, the Settlement Administrator, Epiq (formerly Garden City Group or "GCG") distributed the initial Notice of settlement to members of the Settlement Class by email. Hathaway Decl. at ¶ 5. Of these emailed notices, 2,034 bounced back as undeliverable. Id. at ¶ 6. For these class members whose emails were invalid, Epiq undertook to mail notices to class members, working to obtain current addresses. Epiq was ultimately able to locate mailing addresses for all but 618 settlement class members. Hathaway Decl. at ¶ 7.[4]

On June 11, 2019, Epiq distributed the first reminder Notice to individuals who had not yet submitted claims. Id. at ¶ 8. On June 27, 2019, Epiq distributed a second reminder notice to all individuals who had not yet submitted claims. Hathaway Decl. at ¶ 9. At the Parties' direction, Epiq also sent out three additional Reminder Notice email blasts to class members who had yet to submit

[3] Plaintiffs will provide a Proposed Order granting final approval closer to the August 29, 2019 hearing in order to provide the Court with the most up-to-date figures regarding the settlement.

[4] It was subsequently discovered that some class members who were eligible to participate in this settlement were inadvertently not sent the notice on April 19, 2019. Id. at ¶ 6, n. 3. Notice was promptly sent to these individuals by email on June 11, 2019. Id. The notice was materially the same as the prior notice in all respects except that it provided a deadline of August 10, 2019, to opt out or exclude oneself from the settlement, consistent with the Court's Order that settlement class members be given sixty days after dissemination of notice to opt out or exclude themselves from the settlement. Id.

The deadline to submit a claim was also extended to August 17, 2019, by agreement of the Parties, for all settlement class members, in order to maximize participation in the settlement. Dkt. No. 945.

claims on July 2, July 10, and July 19, 2019. Id. at ¶ 10. Additionally, Epiq prepared a mailed reminder notice that was sent to all settlement class members who had yet to submit claims and whose awards were estimated at $100 or more. Id. at ¶ 11. Thus, to date, Settlement Class members have received multiple notices of the settlement above and beyond what the Parties' agreement calls for, and the Notice has successfully reached 96% of the entire Settlement Class. Hathaway Decl. at ¶ 7.

Pursuant to the Preliminary Approval Order and subsequent stipulations, members of the Settlement Class were given 60 days to exclude themselves or object to the settlement and were given until August 17, 2019, to submit a claim for their settlement share. See O'Connor, 2019 WL 1437101, at *15 (ordering that "Settlement Class members who desire to be excluded shall submit requests for exclusion postmarked (or the equivalent for e-mail) no later than sixty (60) days after the Notice Date"); see also Dkt. No. 945. Out of a class of approximately 15,000 Settlement Class members[5], the administrator has received just three timely and valid requests for exclusion. Hathaway Decl. at ¶ 16.[6] Further, the administrator and/or the Court have received just three objections to the settlement, both by apparently unrepresented drivers. Id. at ¶¶ 17; see also Dkt. Nos. 948, 951, 952.[7] As of July 22, 2019, the administrator has received 4,590 valid claims, representing 58.3% of the settlement fund (assuming 100% participation). Id. at ¶¶ 12.[8] Because the settlement is non-reversionary, all unclaimed funds will be distributed to class members who do submit claims.

Pursuant to the Settlement, the initial distribution of funds will be made within two months of

[5] Plaintiffs initially estimated the class size at 13,600 drivers, but the final data used to effectuate the notice process showed the actual settlement class size at 15,710 drivers.

[6] In addition, the administrator received an exclusion request sent by an attorney purporting to represent and exclude 203 drivers. However, the vast majority of these individuals were not members of the Settlement Class, and the Settlement Administrator determined that this exclusion request for one actual class member was not valid. Hathaway Decl. at ¶ 16, n. 6.

[7] Plaintiffs address these objections infra, § V.

[8] In other words, members of the Settlement Class with more substantial claims are participating at a higher rate than are individuals with less valuable claims. Id. Thus, the percentage of the fund currently claimed is now close to 60%, which is more than the rate reached in the Cotter settlement, which used the same notice process, received final approval by a federal court, and was summarily affirmed by the Ninth Circuit. Plaintiffs expect that rate to increase somewhat further by the time of the Fairness Hearing and will provide the Court with updated statistics at that time.

the Settlement becoming final. See Dkt. 916-1 (Settlement Agreement) at ¶ 136. Payments will be made by check via first-class mail. Distribution shares will be calculated based on the number of miles drivers have transported passengers who placed ride requests using the Uber App (*i.e.*, "on trip" mileage). Dkt. 916-1 (Settlement Agreement) at ¶¶ 135-36. Following the initial distribution of funds, the Settlement Administrator will make reasonable, good-faith efforts to remind settlement class members whose shares are more than $200 but who have not cashed their checks to do so and will work with settlement class members to reissue checks as needed. Id. at ¶ 137.

After 180 days, there will be a second distribution of all uncashed checks (and any remaining portion of a dispute fund that has not been used) to those settlement class members who did submit claims and cashed their checks and whose residual shares would be at least $100. Id. at ¶ 143. If, following the second distribution, there are any remaining funds that cannot reasonably be distributed, such funds will be distributed to the parties' agreed-upon *cy pres* beneficiaries, Legal Aid at Work (for any remaining unclaimed funds out of the California settlement pool) and Greater Boston Legal Services (for any remaining unclaimed funds out of the Massachusetts settlement pool). Id.[9] Thus, the full proceeds of the settlement (less incentive payments for the Named Plaintiffs, attorneys' fees, and administrator expenses[10]) will be paid; no portion of the settlement funds will revert to Uber. Id.

III. LEGAL STANDARD

A class action may be settled only with the court's approval. Fed. R. Civ. P. 23(e). "Approval under 23(e) involves a two-step process in which the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted." Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 525 (C.D. Cal. 2004). At the final approval stage, the primary inquiry is whether the proposed

[9] Thus, very little of the funds will go to *cy pres*, as these will only be funds that are paid by check but not cashed (despite reasonable efforts to encourage class members to cash their checks).

[10] The administrator has informed counsel that its anticipated expenses have increased from $146,000 due primarily to a higher than expected number of class member inquiries, the Parties' request that the administrator's response times to class members be accelerated, and the multiple rounds of additional reminder notices that were sent. Plaintiffs will provide an updated estimate of administration costs prior to the final approval hearing. See Hathaway Decl. at ¶ 18.

settlement "is fundamentally fair, adequate, and reasonable." Lane v. Facebook, Inc., 696 F.3d 811, 818 (9th Cir. 2012); Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998). "It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness." Hanlon, 150 F.3d at 1026 (citing Officers for Justice v. Civil Serv. Comm'n of S.F., 688 F.2d 615, 628 (9th Cir. 1982)).

In making the inquiry, the court must be mindful that the law favors the compromise and settlement of class action suits. See, e.g., In re Syncor ERISA Litig., 516 F.3d 1095, 1101 (9th Cir. 2008); Churchill Village, LLC. v. Gen. Elec., 361 F.3d 566, 576 (9th Cir. 2004); Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992); Officers for Justice v. Civil Serv. Comm'n, 688 F.2d 615, 625 (9th Cir. 1982).

IV. DISCUSSION

Evaluating a settlement proposal at the final approval stage requires the district court to analyze a number of factors: (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; (8) and the reaction of the class members to the proposed settlement. Hanlon, 150 F.3d at 1026. Moreover, amendments to Rule 23, which became effective on December 1, 2018, now provide additional guidance regarding how to evaluate class action settlements. See Fed. R. Civ. P. 23(e)(2) (listing factors to be considered in settlement approval, including (1) whether "the class representatives and class counsel have adequately represented the class;" (2) whether the proposal was negotiated at arm's length"; (3) whether "the relief provided for the class is adequate, taking into account the costs, risks, and delay of trial and appeal"; (4) "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;" (5) "the terms of any proposed award of attorney's fees, including timing of payment;" and (6) whether "the proposal treats class members equitably relative to each other.").

Here, the Court has held that, particularly in light of the amendments to Rule 23(e)(2), "preliminary approval is more robust" and accordingly, the Court has already "consider[ed] the

factors informing final approval." O'Connor v. Uber Techs., Inc., No. 13-CV-03826-EMC, 2019 WL 1437101, at *4 (N.D. Cal. Mar. 29, 2019); see also Cotter v. Lyft, Inc., 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) ("courts should review class action settlements just as carefully at the initial stage as they do at the final stage…rather than kicking the can down the road."). Thus, the Court has already thoroughly evaluated the factors set forth in Rule 23(e)(2) at the preliminary approval stage. Nonetheless, Plaintiffs briefly discuss here all of the factors, including the Hanlon factors.

A. The Factors Set Forth in Rule 23(e)(2) Overwhelmingly Favor Granting Final Approval of The Proposed Settlement.

1. Class Counsel and the Class Representatives Have Adequately Represented the Class under Rule 23(e)(2)(A).

As this Court discussed at the preliminary approval stage, "[t]he resolution of the adequacy of representation issue requires two questions to be addressed: "(a) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (b) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 462 (9th Cir. 2000) (citing Hanlon, 150 F.3d at 1020). Here, the Court correctly concluded that "there is no conflict between Named Plaintiffs and the other Class Members as to their common expense reimbursement and tip claims, and those claims have been litigated vigorously since the outset of these actions." O'Connor, 2019 WL 1437101, at *6. Thus, this factor weighs in favor of granting final approval of the Settlement.

2. The Proposed Settlement Was Clearly Negotiated at Arm's Length under Rule 23(e)(2)(B) With the Assistance of an Experienced Wage-and-Hour Mediator.

As the Court already concluded in evaluating preliminary approval, the settlement was negotiated at arm's length, and thus, "this factor weighs in favor of approval." O'Connor v. Uber Techs., Inc., 2019 WL 1437101, at *7. Specifically, the parties met on three separate occasions in this last round of settlement negotiations with a highly experienced and renowned mediator, Mark Rudy, alongside mediator Francis J. "Tripper" Ortman, who helped bring a fresh perspective to their protracted negotiations. Dkt. No. 916 (Liss-Riordan Decl. in Support of Prelim. Approval) at ¶ 18. These negotiations took place following five years of extremely aggressive litigation, in which the parties exchanged voluminous discovery totaling more than 30,000 pages and exhaustively briefed

and argued the merits of the underlying claims, as well as class certification and the validity of Uber's arbitration agreement. Id. at ¶¶ 3, 5. Thus, the parties had ample information, expert guidance from two experienced mediators, and intimate familiarity with the strengths and weaknesses of the case.

Additionally, as this Court has already found, none of the "red flags" that would indicate collusion are present in this case. O'Connor, 2019 WL 1437101, at *7. Plaintiffs' counsel are not requesting a "disproportionate distribution of the settlement" as they are requesting the 25% benchmark of the settlement fund, the agreement is in no way contingent on Plaintiffs' counsel receiving the requested fees, and any amount of the fee request that is not ultimately awarded would go to the class, not to Uber. Id. Thus, for all these reasons, as the Court already concluded, this factor likewise favors granting final approval.

3. The Relief Provided By The Settlement Is Fair and Adequate under Rule 23(e)(2)(C)(i) in Light of the Risks of Proceeding to Trial.

At the preliminary approval stage, this Court already undertook a detailed analysis of the costs, risks, and delay associated with proceeding in this case as well as the value of the claims being released and the consideration being offered. The Court noted that two major changes have taken place since the prior settlement that the Court considered in 2016: (1) the Ninth Circuit's ruling on Uber's arbitration clause; and (2) the Dynamex Operations W., Inc. v. Superior Court, 4 Cal. 5th 903 (2018), decision by the California Supreme Court, which introduced the "ABC" test for employee-status. O'Connor, 2019 WL 1437101, at *8. By only including drivers who are not bound to arbitrate in the settlement, the downsides of the Ninth Circuit's decision have effectively been eliminated. Plaintiffs believe that Dynamex is likewise a positive development for the drivers.

However, the Court acknowledged that many risks remain. There is a serious question about whether Dynamex will apply to the claims in this case for expense reimbursement and gratuities and there is an ongoing question about the retroactivity of the decision. While Plaintiffs' counsel obtained a favorable ruling on the latter point from the Ninth Circuit Court of Appeals in Vazquez v. Jan-Pro Franchising Int'l, Inc., 923 F.3d 575 (9th Cir. 2019), the panel recently withdrew the decision and certified the retroactivity question to the California Supreme Court. Vazquez v. Jan-Pro

Franchising Int'l, Inc., No. 17-16096, 2019 WL 3271969, at *1 (9th Cir. July 22, 2019). Thus, this outcome of this issue remains uncertain.

Finally, "there is now an ongoing and well-funded battle being fought at the California legislature, in which a number of companies ... are lobbying for a legislative repeal or rollback of Dynamex." O'Connor, 2019 WL 1437101, at *10. Indeed, there have been well-publicized efforts to lobby against the codification of Dynamex by the legislature and to write an exception for so-called "gig economy" workers into the law.[11] Moreover, even if Plaintiffs succeeded on the merits, the Court acknowledged that there were risks in proving damages. For example, "with respect to the expense reimbursement claim, there was a "risk as to which IRS mileage reimbursement rate would apply" which could have reduced expense reimbursement damages by approximately 60%. Id. at *8.

In any case, Plaintiffs have achieved a result that provides much greater relief on a per-class member basis than the larger settlement that was proposed in 2016. As the Court previously noted, "a driver not bound by the arbitration provision would receive 2.3 times the recovery under this Settlement compared to the previous one." Id. at *11. Indeed, as the Court acknowledged, "[c]ompared with other class action settlements generally, a 37% recovery of the verdict value is robust." Id. at n. 7. In sum, the Court's careful analysis of the risks of proceeding to trial compared to the monetary benefits achieved by this settlement was sound, and nothing has changed since March that would warrant any change in the Court's conclusion that the settlement is fair and adequate in light of the risks.

4. The Notice Process Was Effective, and the Method for Distributing Relief is Likewise Effective under Rule 23(e)(2)(C)(ii).

The notice process, which was previously approved by this Court, has proven to be highly

11 See White, Jeremy B. "Dynamex bill clears first vote since gig firms pitched deal." POLITICO.COM (July 10, 2019), available at: https://www.politico.com/states/california/story/2019/07/10/dynamex-bill-clears-first-vote-since-gig-firms-pitched-deal-1093340; Cohen, Rachel M. "A California Bill Could Transform the Lives of Gig Workers. Silicon Valley Wants Labor's Help to Stop It." THE INTERCEPT (July 18, 2019), available at: https://theintercept.com/2019/07/18/uber-lyft-california-gig-economy-labor-unions/; Fernandez Campbell, Alexia "The high-stakes battle between Uber executives and drivers in California, explained", VOX.COM (June 18, 2019), available at: https://www.vox.com/2019/6/18/18682002/uber-lyft-drivers-california-ab5-billCA.

effective and successful. Upon receiving preliminary approval of the settlement from the Court on March 29, 2019, see Dkt. No. 930, the Settlement Administrator, Epiq, promptly began preparing the notice and settlement website. On April 19, 2019, settlement class members were mailed a court-approved notice and claim form, with an explanation of the settlement terms, in the form approved by the Court. See Hathaway Decl. at ¶ 5; Ex. A to Hathaway Decl. (Notice). The notice forms also described the lawsuit, described the total settlement value and the anticipated payments for attorney's fees and service awards, explained the steps the settlement class members should take to exclude themselves from or object to the settlement, explained that settlement class members must submit a claim form (either online or through the mail) in order to recover a settlement payment, and explained that all settlement class members other than those who exclude themselves are bound by the release of claims. Id.[12]

When a notice was returned as undeliverable, Epiq undertook diligent efforts to locate an updated mailing address for the settlement class member. Hathaway Decl. at ¶ 6. Because of the lengthy timeframe covered by this settlement and the fact that some drivers stopped using Uber before the rollout of its arbitration clause in 2013 and 2014, some of the contact information provided by Uber was very outdated. However, Epiq followed all protocols to locate updated information. Ultimately, the administrator and parties were able to locate updated email or mailing addresses for all but 618 settlement class members. Hathaway Decl. at ¶ 7. Thus, 96 % of the settlement class successfully received the notice. Id. at ¶ 7. Plaintiffs note that this 96% "reach rate" in this case is excellent and unquestionably comports with due process. Compare Cotter v. Lyft, Inc., 2017 WL 1033527, *5 (N.D. Cal. Mar. 16, 2017) (granting final approval and stating notice process with 99.6% reach rate provided "due and adequate notice to the Class"); Keller v. Elec. Arts, Inc., 2015 WL 5005057, *5 (N.D. Cal. Aug. 18, 2015) (granting final approval and stating notice process with

[12] As set forth supra, n. 4, it was subsequently discovered that some class members who were eligible to participate in this settlement were inadvertently not sent the notice on April 19, 2019. Notice was promptly sent to these individuals by email on June 11, 2019. The notice was materially the same as the prior notice in all respects except that it provided a deadline of August 10, 2019, to opt out or exclude oneself from the settlement, consistent with the Court's Order that settlement class members be given sixty days from the date of notice dissemination to opt out or exclude themselves from the settlement.

"almost 95%" reach rate provided "due and adequate notice to the Class"); Gribble v. Cool Transports Inc., 2008 WL 5281665, *1 (C.D. Cal., Dec. 15, 2008) (granting final approval and describing notice process as "adequate" where plaintiff "put forth a reasonable effort" to deliver notice to 98% of the class); Koumoulis v. LPL Financial Corp., 2010 WL 4868044, *3 (S.D. Cal., Nov. 19, 2010) (granting final approval where notice was delivered to 98% of the class)

In addition to the initial notice process, a reminder notice was emailed (or mailed to class members who did not have valid email addresses) on June 11, 2019, and again on June 24, 2019. Hathaway Decl. at ¶¶ 8-9. Additional email reminders were sent on July 2, 10, and 19, 2019. Id. at ¶ 10. A mailed reminder was also sent via postal mail to all class members who had yet to claim and had estimated shares of greater than $100. Id. at ¶ 11. Additionally, Epiq staffed a toll-free hotline that received more than 1,000 calls and fielded almost 3,000 emailed inquiries regarding the settlement. Id. at ¶¶ 13, 15. Plaintiffs' counsel's firm has also actively engaged with class members, fielding calls and emails from class members to answer questions and assist with the notice process.

The results of the notice process were extremely successful, particularly in light of the fact that some class members have not had contact with Uber in years. To date, (i) three (unrepresented) settlement class members have objected; (ii) three settlement class members (or .019% of the settlement class) have validly excluded themselves; and (iii) 4,590 settlement class members have submitted valid claims, representing more than 58% of the settlement fund. Hathaway Decl. at ¶¶ 12, 16-17. The Parties will update the Court regarding any changes to these numbers prior to the Final Approval Hearing on August 29, 2019. Id. at ¶ 19.

5. The Requested Attorneys' Fees are Reasonable under Rule 23(e)(2)(C)(iii).

As this Court already noted at the preliminary approval stage, Plaintiffs' request for 25% of the common fund for attorneys' fees "appears to be reasonable" and "aligns with the Ninth Circuit's 25% benchmark." O'Connor, 2019 WL 1437101, at *14. As Plaintiffs set forth in greater detail in their Motion for Attorneys' Fees (Dkt. No. 935), a lodestar cross-check confirms the reasonableness of this request. Dkt. 935 No. at 15. In light of the reasonableness of this request, and the excellent results achieved here on behalf of the class (despite setbacks from the U.S. Supreme Court and Ninth Circuit Court of Appeals, which severely impacted this case), the requested fees are plainly justified

and have now been amply supported by Plaintiffs' Motion for Attorneys' Fees and supporting declarations.[13]

6. The Settlement Treats Class Members Equitably under Rule 23(e)(2)(D).

"Consistent with Rule 23's instruction to consider whether 'the proposal treats class members equitably relative to each other,' Fed. R. Civ. P. 23(e)(2)(C)(i), the Court considers whether the Settlement 'improperly grant[s] preferential treatment to class representatives or segments of the class.'" Hefler v. Wells Fargo & Company, 2018 WL 6619983, at *8 (Dec. 18, 2018) (citing In re Tableware Antitrust Litig., 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)). Here, as the Court already concluded at the preliminary approval stage, "[t]he settlement funds will be distributed to class members based on the number of miles they drove for Uber. This proportional distribution treats Class Members equitably." O'Connor, 2019 WL 1437101, at *14.[14]

Likewise, the proposed enhancements for the named plaintiffs in this settlement are reasonable under the factors set forth in Staton v. Boeing Co., 327 F.3d 938, 977 (9th Cir. 2003). These factors include "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, ... the amount of time and effort the plaintiff expended in pursuing the litigation ... and reasonabl[e] fear[s of] workplace retaliation." Id. Here, as set forth at greater length in Plaintiffs' Motion for Attorneys' Fees (Dkt. No. 935), and the supporting declarations of the named plaintiffs (Dkt. No. 937 through 942), the named plaintiffs should receive the requested incentive payments based on their tremendous contributions to this extremely high-profile litigation. All of these plaintiffs have lent their names to the publicly filed documents in this case, which has garnered outsized attention, thereby creating, in Plaintiffs' view,

[13] These materials have been available to Settlement Class Members as well via the settlement website, but only three class members have objected to the amount of the fee. A discussion of their objections to the fee award is contained infra, § V.

[14] The settlement does not distinguish between drivers who have worked in California and those who have worked in Massachusetts. As discussed previously, California has an express expense reimbursement statute, Cal. Lab. Code § 2802, whereas Massachusetts does not have such an express statute, and the law in Massachusetts is currently not certain as to whether employees may recover for unreimbursed expenses. However, Massachusetts law provides for mandatory trebling of any wage damages, see Mass. Gen. Law c. 149 § 150. Considering both these factors, Plaintiffs determined that the value of the California and Massachusetts drivers' claims were comparable.

"reasonable fears of workplace retaliation" both by Uber and by prospective future employers. Staton, 327 F.3d at 977; see also Van Vranken, 901 F. Supp. at 299 (noting that in evaluating incentive awards, courts may consider "the notoriety and personal difficulties encountered by the class representative" and "the amount of time and effort spent by the class representative" among other factors); see also Bellinghausen v. Tractor Supply Co., 306 F.R.D. 245, 267 (N.D. Cal. 2015) ("Incentive awards are particularly appropriate in wage-and-hour actions where plaintiffs undertake a significant "reputational risk" by bringing suit against their former employers"). As for the Plaintiffs' actions and efforts on behalf of the class, there can be no question that all of the named plaintiffs have greatly benefited the settlement class through their actions. Plaintiffs Gurfinkel and Manahan sat for full-day (extremely adversarial) depositions, which required them to travel from their homes in southern California and miss multiple days of work, and they each responded to multiple rounds of document requests, interrogatories, and requests for admission. See Dkt. 937 (Gurfinkel Decl.) at ¶¶ 3-5; Dkt. 938 (Manahan Decl.) at ¶¶ 3, 5. Their documents and testimony was used extensively in opposing summary judgment and briefing class certification. Moreover, Gurfinkel, Manahan, Sanchez, and Talha have been involved with the litigation for many years, steadfastly responding to their attorneys' questions and helping to spread the word to other drivers about the ability to opt out of the arbitration clause (which is part of what made this settlement class possible in the first place). Because of their unflagging support for the case, drivers who might not otherwise have known about the ability to opt out of the arbitration clause can now participate in this settlement.

Indeed, incentive awards of $5,000 are considered presumptively reasonable in this court, see Villegas v. J.P. Morgan Chase & Co., No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *7 (N.D. Cal. Nov. 21, 2012) (citing In re WalMart Stores, Inc. Wage and Hour Litig., No. 06–02069 SBA, 2011 WL 31266, at *4 (N.D. Cal. Jan.5, 2011)), and in the case of Manahan, Gurfinkel, Talha, and Sanchez, a higher incentive of $7,500 each is appropriate. Additionally, the requested service enhancements, totaling $40,000, comprise less than half a percent of the overall settlement amount – just 0.2%. See, e.g., Monterrubio v. Best Buy Stores, L.P., 291 F.R.D. 443, 462 (E.D. Cal. 2013) (finding total incentive payment of .62% of settlement reasonable). Likewise, there is no "drastic disparity" in the size of each payment relative to the settlement shares of class members, some of

whom will be receiving many thousands of dollars in their settlement payment. For all of these reasons, the requested incentive payments are justified and do not undercut the equitable treatment of the class.

B. The Hanlon Factors Likewise Favor Final Approval

1. The Positive Reaction of the Class Weighs in Favor of Final Approval

"It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 528–29 (C.D.Cal.2004).

Here, just three unrepresented drivers out of 15,710 Settlement Class members have objected to the settlement – a miniscule .019%. By any standard, this lack of objections favors approval of the Settlement. See, e.g., Churchill Village LLC, 361 F.3d at 577 (affirming settlement with 45 objections out of 90,000 notices sent); Wren v. RGIS Inventory Specialists, 2011 WL 1230826, at *11 (N.D. Cal. Apr. 1, 2011), supplemented, 2011 WL 1838562 (N.D. Cal. May 13, 2011) (granting final approval where "only 16 class members—constituting 0.02%—have filed objections to the proposed settlement"); In re Omnivision Technologies, Inc., 559 F.Supp.2d 1036, 1043 (N.D. Cal. 2008) (stating that objections from 3 out of 57,630 Class Members favors approval of the Settlement "by any standard"); Rodriguez v. West Publ. Corp., 2007 WL 2827379, *10, (C.D. Cal. Sept. 10, 2007) (54 objections out of 376,000 notices); Scovil v. FedEx Ground Package Sys., Inc., No. 1:10-CV-515-DBH, 2014 WL 1057079, *1 (D. Me. Mar. 14, 2014) (granting final approval where "13 of 141 plaintiffs (9.2%) did file objections").[15]

Moreover, the small number of timely requests for exclusion to date – just three of 15,710 Settlement Class members have timely opted out – supports final approval. Compare Klee v. Nissan

[15] As set forth in more detail infra, Section V, the objections to the settlement generally lack substance and should be overruled. Moreover, a "settlement is not unfair simply because a large number or a certain percentage of class members oppose it, as long as it is otherwise fair, adequate, and reasonable." Boyd v. Bechtel Corp., 485 F. Supp. 610, 616, 624 (N.D. Cal. 1979) (approving class settlement over the objection of 160 class members representing approximately 16 percent of the class). "To hold otherwise would put too much power in the hands of a few persons having no right to a preferred position in settlement, to thwart a result that might be in the best interests of the class." Id. at 624.

N. Am., Inc., 2015 WL 4538426, *9 (C.D. Cal. July 7, 2015), aff'd (Dec. 9, 2015) (finding .62% opt out rate a "small number" and approving settlement); Hanlon, 150 F.3d at 1025 (affirming settlement approval where 971 class members (.1% of the class) opted out); Wren, 2011 WL 1230826, *29 (approving settlement where 33 of 62,594 class members (.052%) had opted out and noting "overwhelming participation in the settlement"); Fernandez v. Victoria Secret Stores, LLC, 2008 WL 8150856, *8 (C.D. Cal. July 21, 2008) (.04% opt out rate showed that "class members have reacted in an overwhelmingly positive fashion to the proposed settlement"). Notably, the fact that some drivers did opt out indicates that class members were able to understand their rights as described in the class notice(s). See Ching v. Siemens Indus., Inc., 2014 WL 2926210, at *6 (N.D. Cal. June 27, 2014) ("The fact that some members opted out also indicates that the Class Members read the Notice and understood the settlement, such that they were able to make an informed decision whether to participate.").

Additionally, the participation rate – more than half of the fund has been claimed to date (58.3%, assuming 100% participation) – is robust, particularly where many members of the Settlement Class have not worked for Uber in many years because their work completely pre-dated the arbitration clause. Compare Williams v. SuperShuttle Int'l, Inc., 2015 WL 685994, *1 (N.D. Cal. Feb. 12, 2015) (in wage and hour action, finding the "participation rate of the class in this settlement of 40% is robust."); Barcia v. Contain-A-Way, Inc., 2009 WL 587844, *5 (S.D. Cal., Mar. 6, 2009) (25.3% claims rate); Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 485 (E.D. Cal. 2010) (31% claims rate).[16] Again, because the settlement is non-reversionary, all unclaimed funds will be distributed to class members who do submit claims.

Given the tiny number of objections and requests for exclusion, and the strong participation rate, this factor clearly weighs in favor of final approval. Hanlon, 150 F.3d at 1027 ("the fact that the

[16] Other courts have approved wage and hour settlements with lower (at times even significantly lower) claims rates. See Bautista v. Harvest Management Sub LLC, 2014 WL 12579822, *9 (C.D. Cal., July 14, 2014) (approving settlement with claims rate of 25.01% and noting that the rate is "within the range of other wage and hour cases in which the courts have approved settlements") (citing cases); Fernandez, 2008 WL 8150856, at *3 (10% claims rate); Rodriguez v. D.M. Camp & Sons, 2013 WL 2146927, *4 (E.D. Cal. 2013) (15.05% claims rate); Scott v. Aetna Servs., Inc. 201 F.R.D. 261, 266-67 (D. Conn. 2002) (7.8% claims rate); Jankowski v. Castaldi, 2006 WL 118973, *2 (E.D.N.Y. 2006) (8.9% claims rate).

overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness.").

2. The Strength of Plaintiffs' Case

"[This] factor addresses Plaintiffs' likelihood of success on the merits and the range of possible recovery." Franco v. Ruiz Food Prod., Inc., 2012 WL 5941801, at *11 (E.D. Cal. Nov. 27, 2012). "There is no particular formula by which that outcome must be tested." Moore v. PetSmart, Inc., 2015 WL 5439000, *5 (N.D. Cal. Aug. 4, 2015), appeal dismissed (July 27, 2016). Indeed, "determining the probability and likelihood of a plaintiff's success on the merits of a class action litigation, 'the district court's determination is [often] nothing more than an amalgam of delicate balancing, gross approximations and rough justice.'" Id. quoting Officers for Justice, 688 F.2d at 625.

Here, Plaintiffs have submitted to the Court a good faith valuation of claims, see Dkt. No. 916 (Liss-Riordan Decl. in Support of Prelim. Approval) at ¶¶ 38-81 (valuing claims), and the Court has concluded that the settlement is reasonable in light of this valuation. See O'Connor, 2019 WL 1437101, at *9-11 (noting that "the $ 20 million monetary settlement amounts to 37% of the $ 54 million verdict value of Plaintiffs' claims" and holding that "the monetary relief is sufficiently robust to make the amount offered to Plaintiffs in settlement fair, adequate, and reasonable given the potential risks and expense of further litigation."); see also Dkt. No. 930 (granting preliminary approval). Indeed, Plaintiffs' counsel's analysis of the value of claims in another, reasonably similar, gig economy case has now been endorsed by the Ninth Circuit. See Cotter v. Page, No. 17-15648, 2017 WL 4535961, at *1 (9th Cir. Sept. 15, 2017).

Of course, evaluating the "strengths" of Plaintiffs' claims is not solely an assessment of the raw amount of money that could be recovered assuming a clean sweep at trial; it must also consider Plaintiffs' likelihood of succeeding on the merits. See Franco, 2012 WL 5941801, at *11. First and foremost, there is no guarantee that Plaintiffs would prevail on the misclassification issue, in which case drivers would recover *nothing*. Indeed, in Lawson v. GrubHub, Inc. No. 15-05128-JSC (N.D. Cal.), a gig economy case that Plaintiffs' counsel has been litigating for several years, up to and including a bench trial, the Court ultimately issued a ruling holding that GrubHub had properly classified the plaintiff as an independent contractor. Lawson v. GrubHub, Inc., 2018 WL 776354

(N.D. Cal. Feb. 8, 2018).[17] Uber would undoubtedly emphasize, as GrubHub did, that drivers are free to pick their own schedule and are relatively free to reject rides. Although Plaintiffs here believe they had strong counterarguments, they faced the challenge of placing this still-novel issue before a finder of fact. See Cotter v. Lyft, Inc., 60 F. Supp. 3d 1067, 1081 (N.D. Cal. 2015) (noting that a jury in a gig economy case would "be handed a square peg and asked to choose between two round holes.").

While Plaintiffs believe that the California Supreme Court's new decision in Dynamex Operations W. v. Superior Court, 4 Cal. 5th 903, 955, 416 P.3d 1, 34 (2018), reh'g denied (June 20, 2018), should apply to drivers' claims, instead of the Borello test that was applied in the GrubHub case, there is also a significant risk regarding "whether the ABC test applies to expense reimbursement claims, which comprise Plaintiffs' primary claim for damages." O'Connor, 2019 WL 1437101, at *10. "There is also the question of the retroactive effect of Dynamex." Id. While Plaintiffs' counsel received a landmark favorable ruling on the latter point from the Ninth Circuit Court of Appeals in Vazquez v. Jan-Pro Franchising Int'l, Inc., 923 F.3d 575 (9th Cir. 2019), the panel recently granted panel rehearing, withdrew the decision, and certified the retroactivity question to the California Supreme Court. Vazquez v. Jan-Pro Franchising Int'l, Inc., No. 17-16096, 2019 WL 3271969, at *1 (9th Cir. July 22, 2019). Thus, this issue remains a serious and hotly contested one. Finally, there remains uncertainty as to whether the legislature will decide to legislatively exclude so-called "gig economy workers" like Uber drivers from Dynamex's reach. See supra, n. 11. In sum, there was and remains great uncertainty about the ultimate success of Plaintiffs' claims.

3. The Risk, Expense, Complexity, and Likely Duration of Continued Litigation

This factor considers "'the probable costs, in both time and money, of continued litigation.'" Ching, 2014 WL 2926210, at *4 (citing In re Warfarin Sodium Antitrust Litig., 212 F.R.D. 231, 254 (D. Del. 2002), aff'd, 391 F.3d 516 (3d Cir. 2004)).[18] "[U]nless the settlement is clearly inadequate,

[17] While that decision is on appeal, and Dynamex was not applied in that decision, given the ongoing uncertainties regarding the retroactivity of Dynamex, and its fate in the legislature, the outcome in the GrubHub district court decision highlights the risk to plaintiffs of prevailing on the merits in such "gig economy" misclassification cases.

[18] To the extent this factor overlaps with the risk considerations discussed above, Plaintiffs incorporate their previous analysis into this discussion.

its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." Franco v. Ruiz Food Prod., Inc., 2012 WL 5941801, at *12 (E.D. Cal. Nov. 27, 2012) citing DIRECTV, Inc., 221 F.R.D. at 526.

Here, had this settlement not been reached, there remained extensive, costly, and complex litigation to follow. For example, the parties would have had to re-brief class certification in light of the Ninth Circuit's decision, and Uber was likely to raise a host of new arguments and attempt to seek review under Rule 23(f) yet again, if necessary. Additionally, had the parties reached the trial stage, this case may have presented a costly and complicated trial potentially spanning several weeks, which would also necessitate extensive pre-trial preparation, the results of which were not assured. Then, following trial, there would undoubtedly have been lengthy, time-intensive, and costly appeals. Thus, the length, expense, and uncertainty surrounding future litigation weigh in favor of final approval.

4. The Risk of Maintaining Class Action Status

As discussed above, Plaintiffs faced risk in maintaining class action status through trial, particularly in light of the risks of litigation and likelihood of appeals. While Plaintiffs believe that the Ninth Circuit did not disturb other aspects of the Court's prior class certification rulings (apart from its conclusions regarding the arbitration clause), Uber would likely have attempted to appeal or undermine Plaintiffs' Renewed Motion for Class Certification. Other courts have recognized that this risk weighs in favor of granting final approval to class action settlements. See, e.g., Ching, 2014 WL 2926210, at *4 (N.D. Cal. June 27, 2014) ("Plaintiff has identified several meritorious arguments that Defendants could raise to class certification in the event this lawsuit was to proceed" such that "[g]iven the risk in obtaining and maintaining class certification, the Court finds that this factor weighs in favor of approving the settlement"); Rodriguez, 563 F.3d at 966 (noting that "[a] district court may decertify a class at any time" such that even after class certification, "the risk remained that the nationwide class might be decertified" and this factor therefore weighed in favor of settlement); Moore, 2015 WL 5439000, at *6 ("the notion that a district court could decertify a class at any time is an inescapable and weighty risk that weighs in favor of a settlement").

5. The Amount Offered in Settlement

A settlement is, of course, a compromise. See Officers for Justice, 688 F.2d at 628 ("It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not

per se render the settlement inadequate or unfair."); see also id. at 624 ((("the very essence of a settlement is compromise, "a yielding of absolutes and an abandoning of highest hopes.").

Here, the $20 million non-reversionary cash payment, which represents approximately 37% of likely recoverable damages, appropriately balances the value of the case and the risks of future litigation discussed herein, including that if Plaintiffs were to fail to prove an employment relationship, they and the class would take nothing. It also exceeds recoveries on a per-class member basis in other large-scale gig economy cases. See Cotter, 193 F. Supp. 3d at 1039 (approving settlement representing approximately 17% of likely recoverable damages, plus non-monetary benefits, for Lyft drivers). Moreover, while Plaintiffs and the Court did not ascribe significant value to the non-monetary changes in the settlement, these changes do provide some additional benefits to drivers going forward. See Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1049 (9th Cir. 2002) ("Incidental or non-monetary benefits conferred by the litigation are a relevant circumstance" in assessing the results achieved by a settlement); Taylor v. Meadowbrook Meat Company, Inc., 2016 WL 4916955, *5 (N.D. Cal., 2016) ("When determining the value of a settlement, courts consider the monetary and non-monetary benefits that the settlement confers."); Willner v. Manpower Inc., 2015 WL 3863625, *7 (N.D. Cal. June 22, 2015) (a change in policy, even if it cannot be specifically valued, must factor into courts' analysis of the degree of success achieved by a settlement). Taken together, the monetary and non-monetary terms of a settlement are fair and support final approval.

6. The Extent of Discovery Completed

For the parties "to have brokered a fair settlement, they must have been armed with sufficient information about the case to have been able to reasonably assess its strengths and value." Acosta v. Trans Union, LLC, 243 F.R.D. 377, 396 (C.D. Cal. 2007). "A settlement following sufficient discovery and genuine arms-length negotiation is presumed fair." Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 528 (C.D. Cal. 2004).

Here, the parties have exchanged extensive information necessary to make an informed evaluation of the case. Since the O'Connor case was filed nearly six ago, in August 2013, the parties have engaged in exhaustive discovery and extensive motion practice. Plaintiffs propounded multiple sets of written discovery (totaling more than 73 requests), reviewed more than 30,000 pages of

documents produced by Uber, and analyzed several sets of confidential data made available by Uber; Uber propounded multiple sets of written discovery (totaling more than 1,000 requests) and reviewed more than 5,000 pages of documents produced by the named plaintiffs; the parties collectively deposed 10 witnesses, including the named plaintiffs and several Uber employees, totaling approximately 55 hours of deposition testimony; the parties reviewed more than 1,000 pages of documents produced by third parties; the parties litigated at least 10 discovery disputes over five formal discovery dispute letters that were adjudicated by the Court. See Dkt. No. 916 (Liss-Riordan Decl. in Support of Prelim. Approval) at ¶ 3.

In addition to this in-depth discovery and case investigation, the parties have engaged in aggressive motion practice regarding class certification issues and the substantive merits of Plaintiffs' claims. Altogether, the Court has held 24 hearings and conferences in this case (totaling more than 30 hours of court time) (not counting hearings and briefing related to the proposed settlement in 2016). Id. at ¶ 5. The parties briefed a Motion to Dismiss (Dkt. 39), Motion for Judgment on the Pleadings (Dkt. 116), two Motions for Summary Judgment (Dkt. 211 & 499), and Motions to Compel Arbitration (Dkt. 346 & 397), and the parties engaged in extensive supplemental briefing regarding Plaintiffs' Motion for Class Certification (Dkt. 276). The parties also briefed multiple Motions to Stay, as well as multiple Motions for Protective Order (Dkts. 4, 15, 405, 411, 427, 439, 506). Moreover, because of the number of appeals filed in this case, the parties fully briefed *five* separate appeals of this Court's orders before the Ninth Circuit Court of Appeals and argued twice before the Ninth Circuit. See Ninth Circ. Appeal Nos. 14-16078, 15-17420, 15-17532, 16-15000, and 16-15595. Id. at ¶ 7.

Put simply, Plaintiffs were well-armed with the information – and experience from similar cases – necessary to reach a reasonable compromise. This factor, therefore, favors final approval.

7. The Experience and Views of Counsel

The Ninth Circuit has noted that "[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." Rodriguez, 563 F.3d at 967. As such, "[a] district court is 'entitled to give consideration to the opinion of competent counsel that the settlement [is] fair, reasonable, and adequate.'" Ching,

2014 WL 2926210, at *5, quoting Isby v. Bayh, 75 F.3d 1191, 1200 (7th Cir. 1996).

Here, counsel with substantial experience in this field believe the settlement is in the best interests of the drivers and provides substantial monetary benefits as well as non-monetary policy changes that will benefit drivers going forward. The qualifications of Plaintiffs' counsel have been set forth at great length in Plaintiffs' supporting declaration in support of their Motion for Attorneys' Fees. See Dkt. No. 936 (Liss-Riordan Decl. in support of Mot. for Attnys' Fees) at ¶¶ 2-15. As explained in those papers, Attorney Liss-Riordan, a nationally recognized lawyer for her many prominent successes on behalf of low-wage workers, has gained a reputation as the preeminent counsel challenging the use of independent contractors in the so-called "gig economy". Plaintiffs' counsel has defeated summary judgment motions against a number of "gig economy" companies. See, e.g., O'Connor v. Uber Techs., Inc., 82 F. Supp. 3d 1133 (N.D. Cal. 2015); Cotter v. Lyft, Inc., 60 F. Supp. 3d 1067 (N.D. Cal. 2015); Lawson v. Grubhub, Inc., No. 15-CV-05128-JSC, 2017 WL 2951608, at *1 (N.D. Cal. July 10, 2017). Plaintiffs' counsel was also the first firm to litigate the status of a "gig economy" delivery driver all the way to trial, and that decision is currently on appeal. Lawson v. Grubhub, Inc., 302 F. Supp. 3d 1071 (N.D. Cal. 2018), appeal pending, Ninth Cir. Appeal No. 18-15386. The firm has also leveraged its successes against these companies to secure substantial settlements on behalf of "gig economy" workers. See, e.g., Cotter v. Lyft, Inc., 193 F. Supp. 3d 1030, 1032 (N.D. Cal. 2016) ($27 million settlement); Singer v. Postmates, 4:15-cv-01284-JSW (N.D. Cal. April 25, 2018) ($8.75 million settlement); and Marciano v. DoorDash, CGC-15-548102 (Cal. Sup. Ct. July 12, 2018) ($5 million settlement). See Dkt. No. 936 (Liss-Riordan Decl. in support of Mot. for Attnys' Fees) at ¶ 8.

In light of counsel's extensive experience in this area, Plaintiffs' counsel believes that this settlement is in the best interests of the drivers and provides substantial monetary benefits as well as meaningful non-monetary policy changes is entitled to great weight. Accordingly, this factor weighs in favor of final approval.

8. Presence of a Governmental Participant

Because there is no PAGA claim being settled as part of this case, there is no governmental participant whose opinion would affect approval of the settlement one way or another.

V. RESPONSE TO OBJECTIONS

Plaintiffs also hereby respond to the objections that have been to the settlement in this case. Plaintiffs note that these objectors, who appear to be unrepresented, constitute just *three* out of 15,710 members of the Settlement Class – just .019 %. The result is an overwhelmingly positive reaction to the settlement so far. See, e.g., In re Omnivision Technologies, Inc., 559 F.Supp.2d at 1043 (stating that objections from 3 out of 57,630 Class Members favors approval of the Settlement "by any standard"); Churchill Village LLC, 361 F.3d at 577 (affirming settlement with 45 objections out of 90,000 notices sent).

- **Mendel Objection (Dkt. No. 951)**

Mr. Mendel's objection raises a number of issues, such as antitrust and other matters, none of which have merit. For instance, Mr. Mendel argues that the settlement is deficient because "Uber would continue to seek to add or continue to enforce its arbitration contract which deprives me and the other drivers of the federal statutory right to be exempt from arbitration under 9 U.S.C. §1." Dkt. 951 at ¶ 5. Plaintiffs vigorously challenged Uber's arbitration clause through years of litigation and ultimately lost on this issue in the Ninth Circuit, which rejected Plaintiffs' contention that Uber's arbitration clause was unenforceable. Moreover, Mr. Mendel's argument regarding the applicability of the transportation worker exemption to the Federal Arbitration Act, 9 U.S.C. § 1, has already been rejected by courts. Singh v. Uber Techs. Inc., 235 F. Supp. 3d 656, 669 (D.N.J. 2017) ("[V]irtually every circuit having considered the issue has found that the FAA's exclusion only applies to those employees who are actually engaged in the movement of goods, as opposed to the transportation of people, in interstate commerce.") (collecting cases).[19]

Mr. Mendel's other objections to the settlement should also be overruled. For instance, Mr.

[19] Plaintiffs' counsel is intimately familiar with the transportation worker exemption to the FAA, has litigated this issue in numerous courts, and is currently litigating the issue in three federal Court of Appeals matters. All of these cases involve transportation of goods. Plaintiffs' counsel prevailed on this argument in Rittmann v. Amazon.com, Inc., 383 F. Supp. 3d 1196 (W.D. Wash. 2019), appeal pending, Ninth Cir. Appeal No. 19-35381, and lost on this argument in Souran v. GrubHub, Civ. A. No. 16-cv-6720 (N.D. Il. June 14, 2019), Dkt. No. 150, appeal pending, Seventh Circuit Appeal No. 19-2156, and Lee v. Postmates Inc., No. 18-CV-03421-JCS, 2018 WL 6605659, at *1 (N.D. Cal. Dec. 17, 2018), motion to certify appeal granted, No. 18-CV-03421-JCS, 2019 WL 1864442 (N.D. Cal. Apr. 25, 2019).

Mendel objects to the settlement insofar as it does not result in reclassification of drivers as employees and "continue to allow Uber to not reimburse drivers for their expenses." Dkt. 951 at ¶ 4. This position is flawed because, as has regularly been recognized, there is simply no requirement that a settlement of a misclassification case result in the reclassification of the workers at issue. See, e.g., Cotter v. Lyft, Inc., 176 F. Supp. 3d 930, 936 (N.D. Cal. 2016) (rejecting argument that settlement of case alleging Lyft misclassified drivers as independent contractors must result in the reclassification of drivers as employees and noting "[t]he Court's job is not to decide whether it would be better for society if Lyft drivers were classified as employees. The Court's job is to assess whether the settlement falls within a range of fair outcomes for the class members, considering the risks they would face if they took the case to trial.'"), final approval order summarily affirmed, Cotter v. Page, 2017 WL 4535961 (9th Cir., Sept. 15, 2017, No. 17-15648).

Indeed, the vast majority of settlements in misclassification cases do not address the underlying misclassification issue, and merely because a settlement does not resolve the issue does not mean it cannot be a fair, adequate, and reasonable compromise. Id.; see also Cotter v. Lyft, Inc., 193 F. Supp. 3d 1030 (N.D. Cal. 2016); Singer v. Postmates Inc., 4:15-cv-01284-JSW, Dkt. 98 (N.D. Cal. April 25, 2018); Alexander v. FedEx Ground Package Sys., Inc., 2016 WL 3351017 (N.D. Cal. June 15, 2016); Reid v. SuperShuttle Int'l, Inc., 2012 WL 3288816, *1 (E.D.N.Y. Aug. 10, 2012); Chun-Hoon v. McKee Foods Corp., 716 F. Supp. 2d 848, 851 (N.D. Cal. 2010).

Mr. Mendel also argues that the fee award should be reduced because Plaintiffs' counsel alleged did not raise the argument that transportation workers are exempt from the FAA. Dkt. 951 at ¶ 6. As noted above (note 20), Plaintiffs' counsel is an expert on this exemption, having litigated this exemption in numerous cases, and currently has three federal appeals pending on this subject. Plaintiffs' counsel recognized that courts have applied the exemption to workers transporting goods and not passengers. In light of authority stating that transporting passengers across state lines (as opposed to goods) is not covered by the transportation worker exemption, Plaintiffs' professional judgment on this point is not a reason to cut the requested attorneys' fees.

Finally, Mr. Mendel argues that "the settlement amount is not clearly explained" and that "[t]here is no way to understand how many miles Uber will actually acknowledge or the actual

amount that is being offered per mile." Dkt. 951 at ¶ 1. On the contrary, the class notice clearly explains the total amount of the settlement ($20 million), as well as the amount of attorneys' fees being sought (25%) and incentive payments. The notice states that "drivers who drove 0-1,000 miles may receive more than $180, whereas drivers who drove 10,000 miles may receive almost $2,000", which provides drivers with a clear basis for estimating the relative value of their own claims based on their total "on trip" miles. See Ex. A to Hathaway Decl. (Notice). Drivers who disagree with the mileage Uber has recorded for them have a process to contest these figures. See Dkt. 916-1 (Settlement Agreement) at ¶ 139. Thus, this aspect of the objection should likewise be overruled.

- **El Hassane Tadli Souabni Objection (Dkt. No. 948)**

Mr. El Hassane Tadli Souabni's objection should likewise be overruled. Mr. Tadli Souabni objects to the settlement on the ground that it contains too many drivers (such as those who opted out of arbitration after 2014). He argues that by including more drivers in the settlement class, the amount per driver will "decrease significantly." Dkt. 948 at ¶ 3. However, he fails to recognize that if fewer drivers had been included in the settlement class, the overall sum offered in settlement would certainly have been much lower to reflect that fact. Thus, the inclusion of all drivers who are not bound by the arbitration clause in the settlement class does not affect any particular driver's recovery. Moreover, Mr. Tadli Souabni provides no principled basis for excluding some drivers from the settlement class who opted out of arbitration at a different date than others. These drivers all have the same claims and all have the ability to participate in a class action in court; there is no principled reason for them not to be included in the settlement class.

Next, Mr. Tadli Souabni argues that "[t]he proposed plaintiffs legal fees of 25% of the total settlement is above average." Dkt. 948 at ¶ 4. This statement is simply not accurate. The requested fee is precisely in line with the 25% benchmark utilized in the Ninth Circuit, as this Court has recognized. O'Connor, 2019 WL 1437101, at *7 ("Plaintiffs' counsel is requesting 25% of the settlement fund for attorneys' fees, which is the benchmark percentage in the Ninth Circuit."); see also Hendricks v. Starkist Co., 2016 WL 5462423, at *10 (N.D. Cal., 2016), citing Schiller v. David's Bridal, Inc., 2012 WL 2117001, at *17 (E.D. Cal. June 11, 2012); In re Consumer Privacy Cases, 175 Cal. App. 4th 545, 558 n.13 (2009) (recognizing that most fee awards in California are based on

percentage calculations ranging from 25% to 33%). Plaintiffs have set forth at length the basis for their requested fee award; this aspect of the objection should thus also be overruled.

Mr. Tadli Souabni also argues that Plaintiffs failed to "reach a fair settlement with the class members on case by case as the Court ordered." Dkt. 948 at ¶ 4. He does not explain what Court order he is referencing. The nature of classwide relief is that all class members release the same claims and receive consideration based on a principled formula that treats class members equitably. If Mr. Tadli Souabni wanted a settlement that considered his particular situation on a "case by case" basis, he could have opted out of the settlement and brought his own claims against Uber on an individual basis. To the extent his objection is based on a conceptual disagreement with the notion of class-wide relief under Rule 23, he and others had the option to opt out of the class action settlement -- an option which several drivers have exercised.

Mr. Tadli Souabni expresses concern that "[t]he defendant deleted the objector's driving data from his Boston account" such that "he will be unable to verify, submit, and collect his unknown settlement share." Dkt. 948 at ¶ 6. The Settlement provides for a process whereby he, or any class member, can contest the mileage that is attributed to him. See Dkt. 916-1 (Settlement Agreement) at ¶ 139 ("If an Authorized Claimant or Settlement Class Member disagrees with the calculation of his or her Settlement Payment, the records used for such calculation (that is, his or her miles On Trip), or the determination that he or she is not an Authorized Claimant, he or she may challenge the calculation, records, or determination"). Because there should not be a presumption that Uber's mileage data is incorrect and because there is a process in place for contesting Uber's figures, the Settlement is fair and adequate and it addresses Mr. Tadli's Souabni's concerns.

Finally, Mr. Tadli Souabni argues that the allocation formula, which is "calculated as a specific amount of dollars for each mile driven[,] is limited in scope." Dkt. 948 at ¶ 7. He argues that the allocation formula "neglected other important data such as drivers' year of service, drivers' expenses, number of trips completed, and the drivers' road risks." Id. This objection should likewise be overruled. The pro rata distribution of settlement funds based on "on-trip" mileage corresponds directly to the largest source of damages in this case -- Plaintiffs' expense reimbursement claim under Cal. Lab. Code § 2802. As such, it is a reasonable approximation of Plaintiffs' actual damages.

Drivers' years of service and number of trips completed can be expected to correspond with their mileage figures, with drivers who have a longer tenure and greater number of trips also having larger "on trip" mileage. As for drivers' "road risks" or other factors that are more individualized, it is unclear how such factors would have any bearing on drivers' damages for gratuities and expense reimbursement. In sum, the Court has already concluded that "proportional distribution… to class members based on the number of miles they drove for Uber… treats Class Members equitably." O'Connor, 2019 WL 1437101, at *14. That reasoning remains sound, and this aspect of the Objection should be overruled.

- **Belshaw Objection (Dkt. No. 952)**

Mr. Robert Belshaw has objected on the ground that he received the notice for the first time on July 10, 2019, after the deadline to opt out of the settlement. Dkt. No. 952. However, Mr. Belshaw was actually notified of the settlement on June 11, 2019, and the Notice he received clearly stated that he has 60 days (until August 10, 2019) to exclude himself from the settlement.[20] Hathaway Decl. at ¶ 17. Thus, Mr. Belshaw's objection should be overruled.

VI. CONCLUSION

Based upon the foregoing, the papers filed in support of this Motion and Plaintiffs' Motion for Preliminary Approval, and all other submissions made in the case, this settlement should be finally approved and all objections to the settlement rejected. Plaintiffs respectfully request that the Court grant this Motion, enter the proposed order of final approval[21], and permit class members to obtain the benefits of the settlement.

[20] Indeed, he has been informed him of this point by Class Counsel.

[21] Plaintiffs will submit a proposed order of final approval prior to the final approval hearing. Because some of the data may still change, Plaintiffs will submit the proposed order shortly before the hearing.

Date: July 25, 2019

Respectfully submitted,

MATTHEW MANAHAN, ELIE GURFINKEL, MOKHTAR TALHA, PEDRO SANCHEZ, AARON DULLES, and ANTONIO OLIVEIRA, individually and on behalf of all others similarly situated,

By their attorneys,

/s/ Shannon Liss-Riordan

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by electronic filing on July 25, 2019, on all counsel of record.

/s/ Shannon Liss-Riordan

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